

MONTANA PUBLIC DEFENDER COMMISSION  
**CONTRACT PROCESS COMMITTEE MEETING**

The Broadway Inn, Missoula, Montana

**Minutes**

July 17, 2008

*(Approved at the October 10, 2008 Commission Meeting)*

**Call to Order**

The meeting of the Contract Process Committee of the Montana Public Defender Commission was called to order by Commissioner Tara Veazey on behalf of Committee Chair Mike Sherwood at 2:20 p.m.

**Commissioners Present**

Tara Veazey, Jim Taylor, Mike Sherwood, Jennifer Hensley

**Other Interested Parties**

Larry Murphy, OPD Contract Manager; Eric Olson, OPD Training Coordinator; Harry Freebourn, OPD Administrative Director

**Approval of Minutes**

The minutes of the March 2, 2007 meeting were approved.

**Purpose of Committee**

The purpose of the committee was approved as drafted (exhibit CP-1).

**Contractor Dispute Resolution Process**

The dispute resolution process for contract attorney claims (exhibit CP-2) is in place. Eight contract attorneys from various regions have agreed to serve as volunteers on the dispute panel. All contract attorneys were notified of the procedure by email and it is posted on the website, but it has not been used yet. Commissioner Veazey suggested including information about the process in the next Memorandum of Understanding.

**Stipend Discussion**

Following the April Commission meeting, staff were asked to solicit input from contract attorneys on benefits that OPD might be able to provide in addition to or instead of the \$25 monthly stipend. The only suggestion received was for a web-based automated time and billing system. Commissioner Taylor said that this had just been discussed in the IT Committee meeting, and he would provide IT Manager Teri Kelly with some information.

Testing of pre-populated claim forms is in progress with selected contractors. The response has been favorable and implementation will proceed.

Commissioner Hensley suggested that commission members contact all of the contract attorneys to find out what they want from OPD. Commissioner Veazey agreed to make contact with some contractors to address the question. Commissioner Sherwood said that no other states are providing a stipend; they establish a standard overhead rate and then reimburse for extraordinary costs. Mr. Freebourn noted that OPD currently reimburses extraordinary costs if they have been pre-approved.

**Contractor Rate Discussion**

Mr. Freebourn reported on attorney rates for other state agencies as requested at the last meeting. The Department of Justice bills attorney services for state agencies at \$84 per hour. Risk Management and Tort Defense pays external attorneys \$115 to \$160 per hour, depending on the attorney's level of experience. The federal defenders pay \$100 per hour plus travel and costs, with a soft cap of \$7000.

Commissioner Taylor asked that the budget reflect a rate increase for contract attorneys to \$75 per hour. Other state agency rates support this increase. Commissioner Veazey noted that there are unique issues in recruiting contract attorneys, and if they are not paid adequately more FTE will be required to guarantee that services are provided.

Mr. Murphy reported that there are still approximately a dozen contract attorneys in Eastern Montana that refuse to sign a Memorandum of Understanding (MOU) but continue to work for OPD. This problem is also occurring with some mental health providers. Commissioner Veazey stated that OPD should absolutely not be doing business with anyone that refuses to sign an MOU because it is not only about rates, but requires adherence to professional standards and training requirements. The committee discussed asking two commissioners to travel to Eastern Montana to meet with the contractors. Mr. Olson suggested doing a training session in conjunction with the commissioners' visit. He also concurred with Commissioner Hensley's suggestion to bring Mental Health Ombudsman Eve Franklin into the discussion with the mental health providers.

**Rejected Invoices and Pre-approvals**

Commissioner Holton requested pre-approval of costs for an expert in a case that she is handling pro-bono. This request will be referred to the full Commission.

Greg Jackson requested reconsideration of his denied claim for the clemency case. He will appear before the full Commission tomorrow.

Chad Wright's claim for work on the initial petition on a post-conviction case was approved on the basis of the disconnect between the Standards and the statute. That issue is being addressed by the Standards Committee. The Contracts Committee asked that Mr. Wright be advised that his representation stops upon filing the petition.

One contract attorney has not filed a claim for the entire year although the agency believes that he continues to work OPD cases. He is not getting any new cases, and he has signed an MOU with the "45 day rule" language. Mr. Murphy has been sending him a letter requesting that he submit his billing every month. A final letter regarding fiscal year end closing will be mailed after August 14.

**Public Comment**

There was no public comment.

**Old Business/New Business (\*Action Items)**

There were no additional action items.

**Adjourn**

The meeting adjourned at 3:45 p.m.